IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1214 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SWAMI GUNATITNAGAR CO-OP. HOUSING SOCIETY LTD. - Appellant(s)
Versus
RANJAN CORPORATION & 2 - Defendant(s)

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Appearance :
M/S NJ MEHTA ASSO. for Appellant(s) : 1,
MR UNMESH D SHUKLA for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/08/2006

ORAL JUDGMENT

Present appeal has been filed by the appellant herein – original defendant No.1 (hereinafter referred to as “the defendant No.1”) challenging the judgment and

decree passed by the learned City Civil Court at Ahmedabad dated 28th December, 1984 passed in Civil Suit No.3673 of 1979 in partly allowing the said suit directing defendant No.1 – society to pay to the plaintiff Rs.25,031.11paisa with interest at the rate of 6% per annum from the date of the suit till realization of amount by the plaintiff. The plaintiff filed the aforesaid suit in the learned City Civil Court at Ahmedabad for obtaining a decree of Rs.34,192.50 paisa (principal amount as well as interest amount of Rs.9,161.39paisa).

2. It was averred in the plaint that the plaintiff firm carries on work as a building contractor and that defendant No.1 was a registered cooperative society. It is contended that the Rajan Construction Company was a sister concern of the plaintiff firm as many of the partners were common in the said two firms. That the defendant society had entrusted the work of constructing bungalows of Part I of the society to Rajan Construction Company. At the stage when the construction work of Part I was under completion, the defendant society considered construction of the bungalow in Part II and in the context made a resolution dated 19th October, 1974

accepting the tender of the plaintiff for construction of the bungalows in Part II of the society and authorizing the then Chairman to enter into a contract with the plaintiff for that purpose and directing the Engineer of defendant No.1 society to issue work order for commencing the construction of the bungalows. It was further contended that pursuant to the said resolution, the draft of the contract was approved but before it could be sanctioned, there was a change in the office bearers of the defendant society. It was further contended that pursuant to the bona fide instructions issued by the Engineer of defendant society which was treated as work order, the plaintiff commenced the construction work in Part II and for that purpose foundations were dug and necessary work for plinths was done. It was further stated that a running bill dated 28-6-1975 for Rs.71,229.68paisa was submitted to the defendant society and the amount was debited in its account in the books of account of the plaintiff. It was further contended that the plaintiff was required to fill in form No.52 in the Income Tax department and for that purpose, the society was requested by letter dated 16-6-1975 by the plaintiff to execute the contract. It was further contended that the defendant society raised unwarranted disputes with

the Ranjan Construction Company and passed a resolution dated 16th July, 1975 instructing the Engineer of the society not to issue any work order to the plaintiff and resolved not to enter into any agreement with the plaintiff. The plaintiff was intimated about the said resolution by letter dated 16-7-1975. It was further contended that however, at that time, the earlier resolution dated 19-10-1975 was in force and the plaintiff had already carried out the construction in Part II of the society. However, because of the resolution dated 6-7-1975 further construction had to be stopped. It was further contended that the members of the construction company had approached the Engineer of the society and decided to carry out further construction from the plaintiff through the plaintiff and therefore, the Engineer had issued the work order dated 13-12-1975 on behalf of the society for commending further construction of the bungalows. It was thus, contended that the plaintiff had completed the work of constructing 23 plinths and a final bill was given to the Engineer of defendant No.1 by the plaintiff which was checked and payment certificate was issued and the bill and the certificate were submitted to the society. According to the plaintiff, the sum of Rs.89,608.44paisa was due to

the plaintiff from the defendant society and this amount was debited by the plaintiff in its books of account on 2-10-1976. It was further submitted that on reimbursing the cost of laying the pipe lines and it was agreed that a sum of Rs.33,532/- was to be paid to the plaintiff on this count and that amount was, therefore, debited in the account of the defendant society. Thus, a sum of Rs.93,140.44paisa became due from the defendant society to the plaintiff. It was further contended that thereafter, the Engineer of the defendant society issued a certificate after checking the bills and the construction for payment of Rs.89,608.44paisa to the plaintiff and the defendant society agreed to make that payment. It was further contended that the defendant society gave a cheque of Rs.25,000/- dated 14-10-1976 towards the plaintiff's due and that amount was credited to its account by the plaintiff. It was further stated that thus, a sum of Rs.68,140.44paisa remained due from the defendant society and therefore, the plaintiff issued a notice for the said payment, so that it may file a suit for recovery of the amount. It was further stated that thereafter, on adjustment of the amount of Rs.26,109.3paisa being a value of cement and therefore, a Havala entry was made on 5-11-1976 crediting the said

amount. It was further contended that a sum of Rs.80,000/- and a sum of Rs.9,000/- were received from two members of Part I of the society and the said amount was also credited and thus, a sum of Rs.25,031.11paisa remained due from the defendant society and considering the interest at the rate of 11% per annum, a further sum of Rs.8660.72paisa was due and payable. Thus, in all a total of Rs.33,691.83paisa was due and payable and adding the notice charge, it was prayed to pass a decree for an amount of Rs.34,191.50paisa.

3. The suit was resisted by the defendants. A written statement was filed at Exh-12 contesting the suit. It was contended that the suit was barred by limitation. It was further submitted that there was no concluded contract between the plaintiff and the defendant society and that the Engineer of the society was not authorized to issue any work order and therefore, the plaintiff was not entitled to any amount as claimed. It was further submitted that in fact considering the fact that the work done by the plaintiff and/or its sister concern being society and as the members of the society were dissatisfied with the construction work of M/s Ranjan Construction Company, it was decided not enter into

agreement and/or contract with the plaintiff and not to entrust any work to the plaintiff. Therefore, it was requested to dismiss the suit. It was further submitted that the Engineer in collusion with the plaintiff had preferred false bills and recovered excess amount and therefore, it was requested to dismiss the suit.

4. The learned trial Court raised the issue at Exh-19. Considering the last payment made by the defendant society and excluding the notice period, the learned trial Court held that suit was not barred by limitation. So far as the other issues are concerned, plaintiff's partner Ravjibhai Naranbhai Patel was examined at Exh-48. Bhaskarbhai Bhatt, Engineer of the defendant society was examined at Exh-145. Narandas Chimandas Patel, a member of the defendant society was examined at Exh-156. The defendant No.3 Chhaganlal Keshavlal Patel, Secretary of the Society was examined at Exh-161 and one Punamchand Juthalal Patel the Accountant of the society was examined at Exh-172. The documentary evidence consisting of the letter dated 16-6-1975 written by the plaintiff to the defendant society informing the society that as per the work order issued by the Engineer Bhaskarbhai Bhatt, most of the plinth work was done by the plaintiff and

requesting the society to execute the formal contract, which was produced at Exh-51. Other correspondence and documentary evidences were also produced on record. Considering the oral as well as the documentary evidence, the learned trial Court decreed the suit in part by directing defendant No.1 to pay to the plaintiff a sum of Rs.25,031.11paisa with interest at the rate of 6% per annum from the date of suit till its realization of the amount by the plaintiff by holding that;

1. Plaintiff has proved that it is a registered partnership firm.
2. That the plaintiff has proved that it had executed the construction work for defendant No.1 under the instructions of and the work order issued by the Engineer of defendant No.1 society.
3. That the plaintiff has not able to prove that it had carried out the construction work for defendant No.1 valued at Rs.89,609.44paisa.
4. That the plaintiff has failed to prove that it is entitled to recover form defendant No.1 a sum of Rs.3532/- being the value of the pipe line.
5. The defendant has failed to prove that Ravjibhai Naranbhai Patel, partner of the plaintiff had colluded with Bhaskarbhai Bhatt, Engineer of the

defendant No.1 society.

6. That the defendant has failed to prove that it was by way of full and final settlement of the plaintiff's dues that they had given to the plaintiff, the cheque for Rs.25,000/- on October 14, 1976 and that nothing thereafter remitted due and payable to the plaintiff.

Being aggrieved by and dissatisfied with the judgment and decree passed by the learned trial Court, the appellant herein – original defendant No.1 has preferred the present fist appeal.

5. Shri Shalin Mehta, learned advocate appearing on behalf of the appellant, has vehemently submitted that the learned trial Court has materially erred in holding that the suit is not barred by limitation. It is also further submitted by him that the learned trial Court has erred in not appreciating that in absence of the contract, defendant No.1 could not have commenced the construction and could not have commence the work. It is further submitted that the learned trial Court has erred in drawing the inference from the resolution of the appellant society that since there was a resolution, work

order would necessarily follow. It is further submitted that the learned trial Court has erred in not appreciating that the work order should be given in proper and specified form and not by way of oral instructions of the Engineer of the society and that not properly appreciated that the oral instructions of the Engineer of the society would never amount to work order in the eye of law. It is further submitted that the learned trial Court has further erred in holding that if the appellant society had any objection against the bill submitted by respondent No.1, it would not have called upon the members to pay up the amounts due under the bills and would not have recovered the amount from the members. It is also further submitted that the learned trial Court has materially erred in holding that the payment of Rs.25,000/- was by way of full and final settlement in respect of the work done by the plaintiff in Part II of the society. Therefore, it is requested to allow the appeal.

6. So far as the issue with regard to the limitation is concerned, it is required to be noted that last payment was made by defendant No.1 by cheque dated 14-10-1976 of Rs.25,000/- on which entry dated 16-10-1976 was made at

Exh-118 in the books of account of the defendant society and the suit was filed on 29th October, 1979 when the Court reopened after Diwali holidays after 10-10-1979. The statutory notice in the suit claim was given to the Registrar of the cooperative society as required by Section 167 of the Gujarat Cooperative Societies Act on 29-8-1979 (Exh-85). Considering Section 15(2) of the Limitation Act, the period of notice is required to be excluded for the purpose of computing the period of limitation. Now considering the provisions of Section 15(2) of the Limitation Act and excluding the period of limitation, the learned trial Court has rightly held that the suit was not barred by limitation and has rightly answered issue No.7 in affirmative accordingly.

7. Now the main contention on behalf of defendant No.1 was that in absence of concluded contract and/or work order issued by the society, the contractor – plaintiff could not have started the construction work and that the Engineer of the society was not authorized to issue any work order and/or on the basis of the oral assurance of the Engineer, the plaintiff should not have started the construction work. It is not in dispute that the plaintiff had actually carried out the construction work

upto plinth level as shown in the bills at Exh-67 to 79 and the said work was before 9-10-1976, when the defendant society passed resolution. Now, on appreciation of evidence, the learned trial Court has held that the plaintiff had carried out the construction work for defendant No.1 society valued at Rs.89,608.44paisa. Now considering the counterfoil at Exh-135 of the cheque of Rs.25,000/- dated 14-10-1976 and the signature of Ravjibhai, partner of the plaintiff and in absence of any endorsement that the said amount was received by him as full and final settlement of the bill, the learned trial Court has rightly held that the payment of Rs.25,000/- made by cheque dated 14-10-1976 was not in full and final settlement of the bills. Now considering the various credits given and adjustment, the learned trial Court has rightly held that the plaintiff is entitled to a decree for an amount of Rs.25,031/- with future interest at the rate of 6%. Considering the fact that the construction work was actually done by the plaintiff to the extent as stated above even on the principle of the quantum merits also, the plaintiff was entitled to the amount towards the cost of construction which was carried out by him. Under the circumstances, it cannot be said that the judgment and decree passed by the learned trial Court is

erroneous and/or is contrary to the evidence on record.

8. For the reasons as stated above, the appeal fails and is accordingly dismissed. No costs. Ad interim relief granted earlier, if any stands vacated.

(M.R.SHAH,J.)

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